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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/705,931	11/13/2003	Adrian Pfenniger	117203	6566
25944	7590	09/25/2006	EXAMINER	
OLIFF & BERRIDGE, PLC P.O. BOX 19928 ALEXANDRIA, VA 22320			HUYNH, KHOA D	
			ART UNIT	PAPER NUMBER
			3751	

DATE MAILED: 09/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/705,931	PFENNIGER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Khoa D. Huynh	3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 27 June 2006.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-19 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-19 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>06/27/06</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|   | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Specification*

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: a container holder being integrally formed with the handle part and the container body has an integrally formed handle shell part as recited in claim 1, and the container body with an integrally formed handle shell part as recited in claim 16.

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1 and 16 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. Claims 1 recites "the container body has an integrally formed handle shell part". However, such claimed subject matter was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Therefore, such claimed subject matter constitutes new matter. Claim 16 suffers similar deficiency.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Art Unit: 3751

4. Claims 1-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, the phrase "can be" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention.

Claims 2-14 depends on claim 1 and are likewise indefinite.

Regarding claim 15, the phrase "can be" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention.

Regarding claim 16, the phrase "can be" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention.

Claims 17-19 depends on claim 16 and are likewise indefinite.

Regarding claim 8, the linking term "and/or" is considered indefinite since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Claims 9 and 12 suffer similar deficiency.

#### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claim 15, as best understood, is rejected under 35 U.S.C. 102(b) as being anticipated by Ortega (3593725).

The Ortega reference discloses a toothbrush including a toothbrush body and a toothpaste container (Fig. 1). The toothbrush includes a head with bristles (13), a neck (12) and a handle part (the upper portion of element 11) which adjoins the neck and forms a handle together with the toothpaste container (Fig. 2), wherein the toothpaste container is inserted into the handle part such that it is removed and wherein the toothpaste container includes a dispensing head and a container body. A container holder (the lower portion of element 11) is being integrally formed with the handle part, wherein the container holder partially encloses the toothpaste container. The handle part forms a handle together with the inserted toothpaste container and wherein the surface of the handle, essentially maintains its form when subjected to loading irrespective of the filling level of the toothpaste container

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 2, 5, 6, 8, 15, 16 and 19, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Ortega (3593725).

The Ortega reference discloses a toothbrush including a toothbrush body and a toothpaste container (Fig. 1). The toothbrush includes a head with bristles (13), a neck (12) and a handle part (the upper portion of element 11) which

adjoins the neck and forms a handle together with the toothpaste container (Fig. 2), wherein the toothpaste container is inserted into the handle part such that it is removed and wherein the toothpaste container includes a dispensing head and a container body. A container holder (the lower portion of element 11) is being integrally formed with the handle part, wherein the container holder partially encloses the toothpaste container. The container body has a handle shell part (14,15) which projects beyond the container holder and together with the handle part forms an exterior surface of the handle. As shown in Figure 3, the container body is thin walled and flexible so that the toothpaste could be squeezed out of the toothpaste container, wherein the surface of the handle, essentially maintains its form when subjected to loading irrespective of the filling level of the toothpaste container. Even though the Ortega container body and handle shell part include several parts, it would have been obvious to one of ordinary skill in the art to recognize that these parts are secured together as a single unit; constituent parts are so combined as to constitute a unitary whole, which is "integrally formed" within meaning of claim; "integrally formed" is not limited to a fabrication of parts from a single piece, but is inclusive of other means for maintaining parts fixed together as a single or unitary unit. *In re Larson*, 144 USPQ 347 (CCPA 1965); *In re Lockart*, 90 USPQ 214 (CCPA 1951). As shown in Figure 2, the handle shell part together with the handle part form at least substantially step-free surface of the handle and wherein the thin-walled part is different from the handle shell part and is covered by the container holder. The toothbrush further includes

a latching protuberance/latching groove connection between the handle part and toothpaste container (the frictional flange/counterbore arrangement, also col. 1, lines 68-71). The toothbrush also includes a sealing element/peripheral end surface engagement (the frictional flange/counterbore arrangement, also col. 1, lines 68-71).

9. Claims 1, 5, 8, 15, 16 and 19, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Clark (4275750).

The Clark reference discloses a toothbrush including a toothbrush body and a toothpaste container (Fig. 2). The toothbrush includes a head with bristles (28), a neck and a handle part (the upper portion of element 12) which adjoins the neck and forms a handle together with the toothpaste container (Fig. 2), wherein the toothpaste container is inserted into the handle part such that it is removed and wherein the toothpaste container includes a dispensing head and a container body. A container holder (the lower portion of element 12) is being integrally formed with the handle part, wherein the container holder partially encloses the toothpaste container. The container body has a handle shell part (16) which projects beyond the container holder and together with the handle part forms an exterior surface of the handle. As shown in Figure 3, the container body is thin walled and flexible so that the toothpaste could be squeezed out of the toothpaste container, wherein the surface of the handle, essentially maintains its form when subjected to loading irrespective of the filling level of the toothpaste container. Even though the Clark container body and handle shell part include

several parts, it would have been obvious to one of ordinary skill in the art to recognize that these parts are secured together as a single unit; constituent parts are so combined as to constitute a unitary whole, which is "integrally formed" within meaning of claim; "integrally formed" is not limited to a fabrication of parts from a single piece, but is inclusive of other means for maintaining parts fixed together as a single or unitary unit. *In re Larson*, 144 USPQ 347 (CCPA 1965); *In re Lockart*, 90 USPQ 214 (CCPA 1951). As shown in Figure 2, the thin-walled part is different from the handle shell part and is covered by the container holder. The toothbrush also includes a sealing element/Peripheral end surface engagement (the engagement between the handle part of the handle shell part, Figures 1 & 2).

10. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Clark (as discussed supra).

The modified Clark reference DIFFERS in that it does not specifically disclose the viscosity of the toothpaste or size of the opening of the toothpaste container as claimed. It, however, would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the modified Clark reference by employing such viscosity of the toothpaste and/or size of the opening to control the flow of the toothpaste out of the container since discovering the optimum workable ranges involves only routine skill in the art.

11. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Clark (as discussed supra) in view of Cope (3381818).

The modified Clark reference DIFFERS in that it does not specifically disclose that the container has the same form before and after toothpaste has been squeezed out as claimed. Attention, however, is directed to the Cope reference which teaches that it is known, in the toothpaste container art, to make such containers out of plastic so that the container has the same form before and after toothpaste has been squeezed out (col. 3, lines 1-10). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the modified Clark reference by employing such container, in view of the teaching of Cope, in order to save money by producing a container using low material cost.

12. Claims 7, 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Clark (as discussed supra) in view of Jackson (2450002).

The modified Clark reference DIFFERS in that it does not specifically disclose a closure pin/centering star/spike in the handle part as claimed. Attention, however, is directed to the Jackson reference which teaches another toothbrush having a closure pin/centering star/spike (17) on the handle part interacting with the dispensing head. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the modified Clark reference by employing a closure pin/centering star/spike on the handle part interacting with the dispensing head, in view of the teaching of Jackson, in order to ensure that the toothpaste container is properly centered and sealed when inserted within the handle part.

13. Claims 11 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Clark (as discussed supra) in view of Voigt (5382106).

Regarding claim 11, the modified Clark reference DIFFERS in that it does not specifically disclose that the toothpaste container is transparent with a scale as claimed. Attention, however, is directed to the Voigt reference which teaches the use of a toothpaste container with a transparent portion (72) and a scale (74) so the user could determine how much toothpaste remains. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the modified Clark reference by employing a transparent toothpaste container with a scale, in view of the teaching of Voigt, so the user could easily determine how much toothpaste remains.

Regarding claim 17, the modified Clark reference DIFFERS in that it does not specifically disclose that the handle part has a window as claimed. Attention, however, is also directed to the Voigt reference which teaches the use of a handle portion with a window (72) so that the user could determine how much toothpaste remains. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the modified Clark reference by employing a window in the handle portion, in view of the teaching of Voigt, so the user could easily determine how much toothpaste remains.

14. Claims 12 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Clark (as discussed supra) in view of Leversby (5761759).

The modified Clark reference DIFFERS in that it does not specifically disclose that the handle part has non-slip, flexible elastic ribs as claimed. Attention, however, is directed to the Leversby reference which discloses another toothbrush having non-slip, flexible elastic ribs (11) disposed on the handle part (col. 2, lines 60-67) for improving gripping. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the modified Clark reference by employing non-slip, flexible elastic ribs on the handle part, in view of the teaching of Leversby, in order to improve and facilitate gripping.

15. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Clark (as discussed supra) in view of Asher (5735011)).

The modified Clark reference DIFFERS in that it does not specifically disclose a restraining element as claimed. Attention, however, is directed to the Asher reference which discloses another toothbrush having a restraining element (20) which partially holds back toothpaste applied to the head for improving plaque removal. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the modified Clark reference by employing a restraining element, in view of the teaching of Asher, in order to improve plaque removal.

***Response to Amendment***

16. The amendment filed 06/27/06 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment

shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the container body has an integrally formed handle shell part.

Applicant is required to cancel the new matter in the reply to this Office Action.

17. Applicant's amendment, filed on 06/27/06, to the pending claims is insufficient to distinguish the claimed invention from the cited prior art or overcome the rejections as discussed above.

***Response to Arguments***

18. Applicant's arguments, filed on 06/27/06, with respect to the pending claims have been fully considered but are moot in view of the new grounds of rejections as discussed supra.

***Conclusion***

19. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa D. Huynh whose telephone number is (571) 272-4888. The examiner can normally be reached on M-F (7:00-3:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Khoa D. Huynh  
Primary Examiner  
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